CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 9

No. 723 44

DISTRICT OF COLUMBIA, PETITIONER,

vs.

GEORGIANA THOMPSON

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1929

CERTIORARI GRANTED MARCH 11, 1929

(34,032)

(34,032)

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 22, 1929

[fol. 1] [Caption omitted]

IN MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA

No. 152,973

GEORGIANA THOMPSON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant

DECLARATION—Filed June 22, 1927

DISTRICT OF COLUMBIA, ss:

Georgiana Thompson, being first duly sworn on oath deposes and says that she is the plaintiff herein, that she has knowledge of the facts herein contained, and that she has a good cause of action against the defendant, said cause of action being as follows:

[fol. 2] On March 1, 1912, there was approved an Act of Congress entitled, "An act to authorize the extension of Lamont Street, Northwest, in the District of Columbia." That in pursuance of the authority of the said statute the Commissioners of the District of Columbia instituted condemnation proceedings in the Supreme Court of the District of Columbia, such procedings being known as District Court Case No. 1040 "In Re: The Extension of Lamont street Northwest." That in the said condemnation proceedings the jury allowed as the value of the land condemned, known as a portion of Square 2605 and Square 2604, $13,737.48 and costs of $463.78 or a total of $14,201.26 such sum being assessed as benefits against the adjacent property in the abutting squares, 2602, 2603, 2604, 2605, 2606, 2607 and your plaintiff, as the owner of Lot 101, Square 2603, was assessed $200.00 as the amount of her proportionate share of the said benefits. That the said payment was made under obligation of law to the Collector of Taxes of the District of Columbia such sum being the special assessment on Lot 101 in Square 2603, yet notwithstanding the authorization of the above mentioned statute

or the said condemnation proceedings instituted in the Supreme Court of the District of Columbia or the payment of such special assessment, the District of Columbia has wholly failed to extend Lamont Street Northwest, through square 2604 and 2605, the said property condemned being yet unimproved by street extension. That the said District of Columbia has wholly abandoned, renunciated and repudiated the purpose of the said condemnation, as authorized by the aforesaid act of Congress of March 1st, 1912. That your plaintiff is advised and believes that under the circumstances, the assessment so made is not a proper charge against the property of your affiant, and she in entitled to be repaid by the defendant, the amount so paid as aforesaid. That demand has been made upon the defendant for the same but that the same has not been paid, so that there is now due and owing to the plaintiff from the defendant, exclusive of all set-offs or just grounds of defense, the sum of Two Hundred Dollars ($200.00), for which amount the plaintiff claims judgment besides costs of this action.

(S.) Georgiana Thompson.

[fol. 3] Subscribed and sworn to before me this 9th day of June, A. D., 1927. (S.) William C. Strauss, Notary Public, D. C. (Seal.)

Particulars of Demand

Total value of land condemned	$13,737.48
Costs of Condemnation	463.78
	$14,201.26
Plaintiff's portion of assessment paid to Collector of Taxes, D. C.	$200.00
Amount Due Plaintiff	$200.00

In Municipal Court of District of Columbia

Amended Plea to the Jurisdiction—Filed July 15, 1927

Comes now the defendant in the above entitled cause by its attorneys and says that this court ought not to have or

take further cognizance of the action aforesaid, because it says that the supposed cause of action does not arise out of any contract, express or implied, whereby any debt is due the plaintiff, herein, nor does the amount claimed by this plaintiff arise out of damages due from the same or from any wrong or injury to this plaintiff or her property.

(S.) William W. Bride, Edward W. Thomas, Attorneys for Defendant.

Duly sworn to by Edward W. Thomas. Jurat omitted in printing.

[fol. 4] IN MUNICIPAL COURT OF DISTRICT OF COLUMBIA

AFFIDAVIT OF DEFENSE—Filed July 15, 1927

DISTRICT OF COLUMBIA, ss:

Chatham M. Towers, being first duly sworn on oath deposes and says that he is the Collector of Taxes of the District of Columbia, defendant herein, and that he has knowledge of the facts herein contained upon information and belief and that the plaintiff, Georgiana Thompson ought not to have and maintain this cause of action for that:

The object of the above entitled cause is to recover an assessment for benefits, lawfully made by a verdict of a jury duly returned and recorded in the Supreme Court of the District of Columbia on the 10th day of January, 1913, for the condemnation of land for the extension of Lamont Street through squares 2604 and 2605, in the District of Columbia, whereby the title to the land condemned became vested in the District of Columbia, and whereby plaintiff, herein, as owner of lot 101, square 2603, was assessed the sum of Two Hundred Dollars ($200.00) by the said verdict returned and the confirmation thereof by the Supreme Court of the District of Columbia, which said sum of Two Hundred Dollars ($200.00) became a lien upon the land so assessed to be collected as special improvement taxes, sixty days after the confirmation by the said Supreme Court of the District of Columbia on the 10th day of February, 1913, of the aforesaid verdict of the condemnation jury, and protesting and denying that it is unnecessary to the object of this suit to deny that the District of Columbia has wholly

abandoned, renunciated and repudiated the purpose of the condemnation of said land for the extension of Lamont Street aforesaid through squares 2604 and 2605 or that said land condemned is not improved by street extension, the same is denied; and as to the payment by this plaintiff of the sum of $200.00 as set forth in the affidavit of merit, said sum was not paid to the defendant, the District of Columbia within five years from the period commencing sixty days after the confirmation by the Supreme Court of the District of Columbia of the aforesaid verdict of the jury for the acquisition of land for the extension of Lamont [fol. 5] Street, nor within two years after date of service of notice to this plaintiff that the assessment for said improvement of $200 as set forth in the affidavit of merit herein remain unpaid, for which non-paym*n*et of this lawful assessment, lot 101, square 2603, was sold on March 17, 1921 and thereafter redeemed from said sale by the payment of the sum of $200 and interest to the Collector of Taxes of the District of Columbia by the plaintiff, the District of Columbia has no knowledge or information sufficient to form a belief, but says that more than three years has elapsed since the time when the right, if any, to maintain this action by the plaintiff accrued to her.

(S.) C. M. Towers, Collector of Taxes, D. C.

Subscribed and sworn to before me this 5th day of July, 1927. (S.) Adam A. Giebel, Notary Public, D. C. (Seal.)

IN MUNICIPAL COURT OF DISTRICT OF COLUMBIA

JUDGMENT—September 19, 1927

It appearing under Rule of Court that judgment in finding in this cause should be entered, it is so ordered. Wherefore, it is considered that the plaintiff recover of the defendant the sum of Two Hundred Dollars ($200.00), with interest from date, and costs, and have execution thereof.

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IN MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA

No. 152,973

GEORGIANA THOMPSON, Plaintiff,

vs.

DISTRICT OF COLUMBIA, Defendant

BILL OF EXCEPTIONS AND ORDER SETTLING SAME

Be it remembered that there was filed in the Municipal Court of the District of Columbia, on June 22, 1927, an ac-
[fol. 6] tion in assumpsit by the plaintiff in the above entitled cause, against the defendant herein, seeking to recover the sum of $200, representing special benefits assessed against certain property of plaintiff, to wit: Lot 101, Square 2603, by a verdict of a jury rendered in the Supreme Court of the District of Columbia on January 10, 1913, and confirmed by that Court on February 3, 1913, in District Court No. 1040 entitled "In Re: the Extension of Lamont Street, Northwest," and paid to the Collector of Taxes of the District of Columbia, a municipal corporation, on March 15, 1923 to redeem said property as provided by section 491j of the Code of Law for the District of Columbia. The said condemnation proceeding was authorized by the following Act of Congress:

"Public—No. 93

(S. 238)

An Act to Authorize the Extension of Lamont Street Northwest, in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That under and in accordance with the provisions of subchapter one of chapter fifteen of the Code of Law for the District of Columbia, within six months after the passage of this Act, the Commissioners of the District of Columbia be and they are hereby authorized and directed to institute in the Supreme Court of the District of Columbia a proceeding in rem to condemn the land that may be nec-

essary to extend Lamont Street northwest through squares numbered twenty-six hundred and four and twenty-six hundred and five, with a width of ninety feet, said extension to be a direct prolongation of Lamont Street as not existing east of Nineteenth Street. Provided, however, That the entire amount found to be due and awarded by the jury in said proceeding as damages for and in respect of the land to be condemned for said extension, plus the costs and expenses of said proceeding, shall be assessed by the jury as benefits.

Sec. 2. That there is hereby appropriated, out of the revenues of the District of Columbia, an amount sufficient [fol. 7] to pay the necessary costs and expenses of the said condemnation proceeding taken pursuant hereto, and for the payments of the amounts awarded as damages, to be repaid to the District of Columbia from the assessments for benefits and covered into the Treasury to the credit of the revenues of the District of Columbia.

Since the ratification of the verdict in the aforesaid condemnation case, and since the acquisition of the land involved by the District of Columbia, as the appropriating party, and up to the time of the filing of this suit, said land has not been laid out into roadway, sidewalk, or parking space, nor has it been graded, paved or otherwise physically improved for highway purposes, although the land is open, vacant property lying between two improved highways, to wit: 19th Street and Adams Mill Road, and is in the shape of a rectangular lot, ninety feet wide, with a grade sloping westward. On the south side of the lot for a distance of about one hundred and fifty feet, a cement sidewalk is laid, constructed by a private person as an entrance to an apartment house as the result of permit issued therefor by the defendant. Since the ratification of the verdict in the afore-mentioned condemnation case and since the acquisition of the land as authorized by the Act of Congress of March 1, 1912 and up to the time of the filing of this suit, the said land has not been laid out for a roadway, sidewalk or parking space, nor has it been graded, paved or otherwise improved for highway purposes, nor has any specific appropriation been made by Congress therefor. During the year 1924, to wit, March 17, 1924 the District of Columbia laid and completed a cement side-

walk and curb across the east end of the condemned tract, being the west sidewalk and curb of 19th Street, Northwest at that point, the said sidewalk and curb constituting an effective obstruction to any vehicular traffic over the condemned land. Lamont Street east of this point is open for vehicle and pedestrian traffic, being paved, graded, laid out with roadway, sidewalks, curbing and parking spaces and was so physically improved prior to the institution of the condemnation proceeding herein. About twenty-four thousand square feet (24,000) of ground constitute [fol. 8] the area of the property condemned under the Act of Congress approved March 1, 1912 (37 Stat. 71) aforesaid, the value thereof plus the costs of the condemnation proceeding for the extension of Lamont Street, authorized hereunder amounted to Fourteen thousand two hundred and one dollars and twenty-six cents ($14,201.26) of which sum the two hundred dollars ($200) involved in this action was assessed against plaintiff's land by way of benefits.

No official action has been taken by the Commissioners, or by Congress, looking to the abandonment of the title to said land or of the right of defendant to physically improve it since its acquisition through the condemnation proceedings, District Court No. 1040, which are and were considered at the hearing of this cause and are made a part of this Bill of Exceptions by reference although Lamont Street, as identified in said condemnation proceeding, has not been extended through Squares 2604 and 2605 as an improved street. The following letter, considered at the trial of this cause on behalf of the plaintiff, although not binding on defendant as an admission was introduced to establish the plaintiffs first knowledge of the intention of the defendant to abandon, or that it had abandoned the purpose of the aforesaid condemnation proceedings, as claimed by the plaintiff, over defendant's objection and to the overruling of which defendant was allowed an exception.

January 29, 1926.

"Mr. Paul V. Rogers, Counsellor at Law, Evans Building, Washington, D. C.

DEAR SIR: Receipt is acknowledged of your letter of January 7, 1926, in which you state that you represent several taxpayers, and particularly Georgiana K. Thompson, with

reference to certain assessments made under proceedings for the extension of Lamont Street, N. W., as authorized by the Act of Congress approved March 1, 1912. You further state that it appears that the District has now abandoned the project for the extension of this street, and you have advised your clients that under the circumstances the retention by the District of the benefits so assessed and [fol. 9] paid was improper and claim should be made for the refund thereof.

The official files of the Engineer Department indicate that it was never the intention to open Lamont Street between Squares 2604 and 2605 to vehicular traffic, because of the excessive grade. Moreover, it appears that the principal reason for condemnation of the land was to preserve the vista to the Zoological Park and to provide access to the park. The record also shows that it was the intention to treat this street with terraces and steps.

The assessments for benefits in this case were made under a formal condemnation proceeding, and the verdict of the jury was duly ratified and confirmed by the Court. Therefore, the assessments, from our consideration of the matter, were legally made, and are legally payable. The only condition under which a refund of the payment made to the District of Columbia can be made is where the facts show the payment to have been made in error. This condition is not present in the matter of the benefit assessments paid under the Lamont Street proceedings.

You are advised that an application for such refunds will not be entertained by this office.

Very truly yours, (Signed) D. J. Donovan. D. J. Donovan, Auditor of the District of Columbia.

DJD:w.

but not binding as to the District.

O. K. as to evidence of signature. E. W. Thomas, Asst. C. C."

Whereupon the cause coming on to be heard before James A. Cobb, Esquire, one of the Judges of the Municipal Court on July 21, 1927 objection was made by defendant that the Municipal Court was without jurisdiction in the premises of the cause of action and/or the parties thereto and that more than three years had elapsed since any right of

action had accrued under the law providing for collection of special assessments as provided in 491*j* of the Code of Law for the District of Columbia and for the redemption of [fol. 10] plaintiff's property as set forth in defendant's affidavit of defense, which objections were then and there overruled, to which rulings of the Court, defendant by its counsel in open Court then and there noted exceptions on those matters of law, said exceptions being then and there allowed by the Court.

Whereupon the said Judge of the Municipal Court, on September 13, 1927, after hearing argument on the merits of the case rendered a judgment in favor of the plaintiff for the said sum of $200 to which judgment the defendant by its counsel in open Court noted exception to the matters of law involved, and made known its intention of applying to the Court of Appeals of the District of Columbia for a writ of error.

Whereupon, said writ of error having been petitioned for and the same having been duly allowed, the defendant, by its counsel comes now and prays the Court to sign this, its Bill of Exceptions, and the same is signed, settled and sealed, now for then, and made a part of the record in this cause this 23rd day of December, 1927.

James A. Cobb, Judge Municipal Court.

IN MUNICIPAL COURT OF DISTRICT OF COLUMBIA

WRIT OF ERROR

United States of America, ss:

The President of the United States to the Honorable James A. Cobb, Judge of the Municipal Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Municipal Court, before you, between Georgiana Thompson, Plaintiff, and The District of Columbia, Defendant, No. 152,973, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment [fol. 11] be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 20 days from the settling of the bill of exceptions, or within such additional time after the expiration of the 20 days as the court below or a judge thereof for sufficient cause shall allow; that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable George E. Martin, Chief Justice of the said Court of Appeals, the 28th day of September, in the year of our Lord one thousand nine hundred and twenty-seven.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

Allowed by Josiah A. Van Orsdel, Associate Justice of the Court of Appeals of the District of Columbia.

In Municipal Court of District of Columbia

Assignment of Errors—Filed December 29, 1927

During the trial the Court committed errors as follows:

1. The Court erred in overruling defendant's plea that jurisdiction of the Court over the cause of action as set forth in the declaration herein, or of the parties therein.

2. The Court erred in overruling defendant's plea that more than three years had elapsed since any right of action had accrued under the provisions of Section 491*j* of the Code of Laws for the District of Columbia relating to the collection of benefits on land acquired by condemnation.

3. The Court erred in overrling defendant's plea that more than three years had elapsed since the payment of the special assessment by plaintiff redeeming her land from [fol. 12] sale for nonpayment of benefits assessed in a condemnation case.

4. The Court erred in holding that defendant had abandoned the purpose for which the special assessment (for benefits) was paid.

5. The Court erred in holding that the physical improvement of Lamont Street, as acquired under the authority of the Act of Congress approved March 1, 1912 (37 Stats. 71), entitled "An Act to authorize the extension of Lamont Street, Northwest, in the District of Columbia," was contemplated, thereby.

6. The Court erred in holding that the physical improvement of Lamont Street as acquired under the above authority by condemnation through confirmation by the Supreme Court of the District of Columbia of a verdict of a jury in District Court No. 1040, was obligatory upon defendant.

7. The Court erred in holding that the defendant was legally bound to physically improve Lamont Street so acquired, by accepting payment of the Assessment for benefits as a result of said condemnation case.

8. The Court erred in holding that a quasi-contractual relationship existed between plaintiff and defendant to the end that Lamont Street should be physically improved.

9. The Court erred in entering judgment in favor of the defendant.

(S.) William W. Bride, Edward W. Thomas, Attorneys for Defendant.

Served copy of above:

(S.) Paul V. Rogers, W. E. Furey, Attorneys for Plaintiff.

* * * * * * *

IN MUNICIPAL COURT OF DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed December 29, 1927

The Clerk of the Municipal Court in making up the Record in the above entitled case will include the following:

1. The declaration.
2. The Amended Plea to the jurisdiction.

[fol. 13] 3. The affidavit of defense.

4. The judgment of the Court.
5. The Bill of Exceptions.
6. The Assignment of errors.
7. This Designation.

William W. Bride, Edward W. Thomas, Attorneys for Defendant.

Served copy of above:

W. E. Furey, Paul V. Rogers, Attorneys for Plaintiff.

Clerk's certificate to foregoing transcript omitted in printing.

Friday, November 9th, A. D. 1928.

* * * * * * *

No. 4699

DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

GEORGIANA THOMPSON

The argument in the above entitled cause was commenced by Mr. E. W. Thomas, attorney for the plaintiff in error, and was continued by Mr. W. E. Fury, attorney for the defendant in error, and was concluded by Mr. E. W. Thomas, attorney for the plaintiff in error.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 4699

DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

GEORGIANA THOMPSON, Defendant in Error

Writ of Error to the Municipal Court

(Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices)

OPINION

Mr. Justice ROBB delivered the Opinion of the Court:

The Act of March 1, 1912 (37 Stat. 71), authorized and directed the Commissioners of the District of Columbia "to institute in the supreme court of the District of Columbia a proceeding in rem to condemn the land that may be necessary to extend Lamont Street northwest through squares numbered twenty-six hundred and four and twenty-six hundred and five, with a width of ninety feet, said extension to be a direct prolongation of Lamont Street as now existing

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east of Nineteenth Street." The Act further provided that the entire amount found to be due and awarded by the jury as damages for and in respect of the land to be condemned, plus the costs and expenses of the proceeding, should "be assessed by the jury as benefits."

Pursuant to the provisions of this Act, proceedings were instituted which resulted in the condemnation of land necessary for the extension of Lamont Street. Damages were awarded in the sum of $13,737.48, and costs of $463.78, making a total of $14,201.26, which sum was assessed as benefits against adjacent property in abutting squares 2602, 2603, 2604, 2605, 2606, and 2607. Against defendant-in-error's lot, Lot 101 in Square 2603, there was assessed $200 as the amount of her proportionate share of benefits. This verdict was confirmed by the Court on February 10, 1913, and the amount assessed against defendant-in-error subsequently was paid.

On January 7, 1926, defendant-in-error, through her counsel, in a written communication demanded of the District of Columbia the return of the assessment paid, on the ground that the District had abandoned the project for the extension of Lamont Street as contemplated by the Act of March 1, 1912. The reply to this communication was dated January 29, 1926, was signed by the Auditor of the District of Columbia, and contained the following statement: "The official files of the Engineer Department indicate that it was never the intention to open Lamont Street between Squares 2604 and 2605 to vehicular traffic, because of the excessive grade." The communication further stated that the assessments for benefits "were made under a formal condemnation proceeding, and the verdict of the jury was duly ratified and confirmed by the Court. Therefore, the assessments, from our consideration of the matter, were legally made, and are legally payable. The only condition under which a refund of the payment made to the District of Columbia can be made is where the facts show the payment to have been made in error. This condition is not present in the matter of the benefit assessments paid under the Lamont Street proceedings."

Thereafter, on June 22, 1927, defendant-in-error filed suit in the court below for the recovery of the assessment. Thereupon, the plaintiff-in-error, through its Collector of

Taxes, interposed an affidavit of defense based upon substantially the same grounds set forth in the Auditor's letter of January 29, 1926, and in addition the statute of limitations.

At the trial the plaintiff-in-error contended that the Municipal Court was without jurisdiction and that the statute of limitations had intervened.

The bill of exceptions contains the following: "Since the ratification of the verdict in the afore-mentioned condemnation case and since the acquisition of the land as authorized by the Act of Congress of March 1, 1912 and up to the time of the filing of this suit, the said land has not been laid out for a roadway, sidewalk or parking space, nor has it been graded, paved or otherwise improved for highway purposes, nor has any specific appropriation been made by Congress therefor. During the year 1924, to wit, March 17, 1924, the District of Columbia laid and completed a cement sidewalk and curb across the east end of the condemned tract, being the west sidewalk and curb of 19th Street, Northwest, at that point, the said sidewalk and curb constituting an effective obstruction to any vehicular traffic over the condemned land. * * * No official action has been taken by the Commissioners, or by Congress, looking to the abandonment of the title to said land or of the right of defendant to physically improve it since its acquisition through the condemnation proceedings."

Judgment was for the defendant-in-error, and the writ of error followed.

The assignments of error are as follows: First, want of jurisdiction. Second, the statute of limitations. Third, that the court erred in holding that the plaintiff-in-error had abandoned the purpose for which the special assessment for benefits was paid. Fourth, that "the court erred in holding that the physical improvement of Lamont Street, as acquired under the authority of the Act of Congress approved March 1, 1912 (37 Stats. 71), entitled 'An Act to authorize the extension of Lamont Street, Northwest, in the District of Columbia,' was contemplated thereby"; or that the District of Columbia "was legally bound to physically improve Lamont Street so acquired, by accepting payment of the Assessment for benefits as a result of said condemnation case."

The Act of March 1, 1912 (37 Stat. 71), authorized the Commissioners to condemn the land necessary to extend Lamont Street through squares 2604 and 2605, "with a width of ninety feet, said extension to be a direct prolongation of Lamont Street as now existing east of Nineteenth Street."

In Washington R. & E. Co. v. Newman, 41 App. D. C. 439, 445, involving a condemnation proceeding, the trial court had instructed the jury that, in assessing benefits against the properties to be benefited, it should take into consideration "the benefits and advantages they may severally receive from the said extension of the said street. By the extension of the street the jury are to understand its establishment, laying out and completion for all of the ordinary purposes of a public thoroughfare." Mr. Justice Van Orsdel, speaking for this Court, said: "This is assigned as error by defendant, on the ground that it permitted the jury to take into consideration future improvements. The benefits were to accrue from the opening of a street, not from an unimproved strip of land. The object in laying out and opening this street was to make it a thoroughfare for all the ordinary uses of a street, as the term 'street' is understood when used in comparison with the manner in which surrounding streets are constructed and used, not taking into consideration future uses to which the street may be subjected, or unforeseen improvements which may result from its construction. This form of instruction has been approved in a number of cases where the language of the act was substantially the same as here. Columbia Heights Realty Co. v. Macfarland, 31 App. D. C. 112, 217 U. S. 547, 54 L. ed. 877, 30 Sup. Ct. Rep. 581, 19 Ann. Cas. 854; American Security & T. Co. v. Rudolph, 38 App. D. C. 32."

It is apparent, therefore, that the basis for the assessments for benefits in this case was that the condemned land was to be opened as "a direct prolongation of Lamont Street" so as "to make it a thoroughfare for all the ordinary uses of a street." In other words, "the benefits were to accrue from the opening of a street, not from an unimproved strip of land." On no other theory could an assessment for special benefits be sustained. The acquisition by the municipality of land for an extension of a public park

results in general benefit to the public, and the cost of the extension should be borne by the public.

The first question for consideration is whether the municipality may retain money collected as special benefits to accrue from the opening of a street, without incurring any legal obligation to open it.

In Bradford v. City of Chicago, 25 Ill. 349, a suit to recover back moneys paid under special assessment, it was ruled that where a street is not opened in a reasonable time the moneys paid as assessments for benefits may be recovered back in assumpsit, on the theory that the consideration has wholly failed. The Court said: "In projecting this improvement by the city, and raising money by condemning property supposed to be benefited by the improvement, the city undertook that they would proceed according to law in making the assessments, and would devote the money raised to the completion of the undertaking, in a reasonable time. It was on this undertaking the plaintiff, voluntarily, we will say, paid his money. He trusted to the good faith, intelligence and integrity of the city officials, that by no fault, misconduct or miscarriage of their own, the work should be unreasonably delayed; that the improvement should be made in a reasonable time, and fully carried out. The city has failed to do it, and has given, and can give no assurance whatever that the improvement shall be made. The plaintiff may well contend, that he has paid his money on a consideration which has failed—that he has acquiesced in no delay, and that he ought to have his money restored to him, and which he demanded one year before he commenced his suit."

In Valentine v. City of St. Paul, 34 Minn. 446, the Court said: "The effect of the abandonment by the city of the project of 'extending and opening' the proposed street for and on account of which, and which only, the assessment was made, is that the consideration of the assessment has wholly failed. So that the city stands in the position of holding in its treasury money collected from the plaintiff which it has no right in equity, good conscience, or common honesty to retain, because the purpose for which it was collected has been completely abandoned. In such circumstances no statute is required to impose upon the city a legal obligation to make restitution. An action lies as at common law for

money had and received." See also McConville v. City of St. Paul, 75 Minn. 383; City of San Antonio v. Peters, 40 S. W. 827. We are in accord with the doctrine announced in these decisions.

The District of Columbia is a municipal corporation (United States v. Cella, 37 App. D. C. 423; District of Columbia v. Tyrell, 41 App. D. C. 463), and its responsibility in the premises does not differ from that of a private person. Valentine v. City of St. Paul, 34 Minn. 446, 448; Pimental v. City of San Francisco, 21 Cal. 352; Marsh v. Fulton Co., 10 Wall. 676.

The next question is whether the action was barred by the statute of limitations. The condemnation proceedings were regular in form and resulted in the acquisition by the municipality of the condemned land, the title to which it still holds. It is manifest, therefore, that the District at any time subsequent to the confirmation of the verdict of the jury might have opened this street. The fact that in 1924 it "laid and completed a cement sidewalk and curb across the east end of the condemned tract," while indicating a purpose to delay the actual opening of the street, was not conclusive of the intention on the part of the municipality to abandon the project. The first definite act or declaration on the part of the District came from the Auditor in the communication of January 29, 1926, in response to a letter from the defendant-in-error demanding of the District a refund. The position assumed by the Auditor, in effect, is the position now taken by the District, because it insists that the Act of March 1, 1912, did not contemplate "the physical improvement of Lamont Street," and that the District was not "legally bound to physically improve Lamont Street so acquired."

In McConville v. City of St. Paul, 75 Minn. 383, the Court said: "The city, by judicial proceedings, compelled him (the plaintiff) to pay to it the full amount of the assessment; and, with commendable forbearance, he waited nearly six years for the city to complete its work after obtaining his money in August, 1892, which it keeps without the slightest evidence of its intent to complete its work of grading and improving the street named. If it intends to complete this work, it should do so or say so."

In the present case, the first definite statement of the District's interpretation of the condemnation Act and of the District's purpose not to open the street was in the communication of January 29, 1926. This action was brought on June 22, 1927, and was, therefore, within the statute of limitations, which provides that such actions shall be brought within three years.

The Municipal Court had jurisdiction of the parties and of the subject matter.

Our conclusion is that the judgment below was right and it is, therefore, affirmed, with costs.

Affirmed.

Endorsed: No. 4699. District of Columbia, Plaintiff in Error, vs. Georgiana Thompson. Opinion of the Court per Mr. Justice Robb. Court of Appeals. District of Columbia. Filed January 7, 1929. Henry W. Hodges, Clerk.

Monday, January 7th, A. D. 1929.

* * * * * * *

No. 4699, January Term, 1929

DISTRICT OF COLUMBIA, Plaintiff in Error,

vs.

GEORGIANA THOMPSON

In Error to the Municipal Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Municipal Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Municipal Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Justice Robb, January 7, 1929.

Memorandum: January 24, 1929.—Petition for rehearing or stay of mandate filed.

Memorandum: January 26, 1929.—Petition for rehearing denied; mandate stayed under Rule 24.

No. 4699

District of Columbia, Plaintiff in Error,

vs.

Georgiana Thompson, Defendant in Error

Designation of Record

The Clerk, in preparation of the record on petition for Certiorari to the Supreme Court of the United States, will include the following:

1. Transcript of Record.
2. Argument of Cause.
3. Opinion.
4. Judgment.
5. This Designation.

William W. Bride, Alex. H. Bell, Jr., Attorneys for Plaintiff in Error.

Endorsed: No. 4699. District of Columbia, Plaintiff in Error, vs. Georgiana Thompson. Designation of Record. Court of Appeals. District of Columbia. Filed February 15, 1929. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 27, inclusive, constitute a true copy of the Transcript of the Record and proceedings of said Court of Appeals per designation of counsel in the case of District of Columbia, Plaintiff in Error, vs. Georgiana Thompson, No. 4699, January

Term, 1929, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 15th day of February, A. D. 1929.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal, Court of Appeals, District of Columbia.)

(6075)

[fol. 29] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 11, 1929

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,032. Court of Appeals, District of Columbia. Term No. 723. District of Columbia, petitioner, vs. Georgiana Thompson. Petition for writ of certiorari and exhibit thereto. Filed February 26th, 1929. File No. 34,032.